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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,082	03/31/2004	William E. Lynch III	WEI-101	5648
25628 7590 07/09/2009 LAW OFFICES OF WILLIAM H. HOLT 12311 HARBOR DRIVE WOODBIDGE, VA 22192				
EXAMINER				
HADZONOZ, BANAFSHEH				
ART UNIT		PAPER NUMBER		
3715				
MAIL DATE		DELIVERY MODE		
07/09/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/813,082

Applicant(s)

LYNCH, WILLIAM E.

Examiner

Banafsheh Hadizonooz

Art Unit

3715

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Detailed Action

In response to the after final amendment filed on 06/02/2009, claims 1-7 are rejected. Applicant's request for reconsideration of the finality of the previous Office action is persuasive and, therefore, finality is withdrawn. This office action is **Non-Final**.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1, 2, 6 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Parmenter (2,859,541).

Regarding claim 1, Parmenter discloses a template for evaluating and scoring designated pairs of responses to a series of questions, said template comprising a series of paired locations thereon, a first set of said locations being linked by indicia on said template, a pathway leading from said first set of locations to at least a second set of locations, said pathway being shown by said indicia for leading a user from said first set to said second set of locations, each of said locations having means for allowing viewing through said template (See Col.1, 28-41, Col.4, 19-29 and Figure 4).

Regarding claim 2, Parmenter further discloses a template as defined in claim 1, wherein said indicia comprises a series of lines connecting the sets together (See figure 5 and Col.4, 19-29).

With respect to claims 6 and 7, Parmenter further discloses a method for evaluating the pairs of responses to a series of questions by positioning the template upon an answer sheet and following a pathway wherein said pathway is comprised of a continuous line (See Figure 4).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parmenter (2,859,541).

Regarding claim 3, Parmenter discloses that the indicia comprise a series of solid lines connecting the sets together. Parmenter does not specifically disclose a series of alternating solid and broken lines on the indicia. However, the only difference between the prior art product and the claimed invention is printed matter that is not functionally related to the product. Moreover, the content of the printed matter will not distinguish the claimed invention from the prior art. See *re Ngai*, 367 F.3d 1336, 1339, 70 USPQ2d 1862, 1864 (Fed. Cir. 2004).

With respect to claims 4 and 5, Parmenter discloses that the color applied to the lines that connect one group of questions on the indicia is different from the color applied to the lines connecting another group of questions in order to distinguish the groups (See Col.4, 19-29). Parmenter does not specifically disclose identifying each

pairs of locations by an identical geometric shape for a pair of locations and a different geometrical shape for the next consecutive pair. However, the applicant has not disclosed if identifying the pairs of responses by applying different geometric shapes on the indicia provides any unexpected results or has any advantage over applying a different color. Moreover, one of ordinary skill in the art would have expected the invention to work equally well if the groups of questions are distinguished by the color of their connecting lines. Therefore, it would have been obvious to one of the ordinary skill in the art to modify Parmenter's invention to include various geometric shapes in order to distinguish the pairs of responses from one another because such modification is considered to be a matter of design choice.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Banafsheh Hadizonooz whose telephone number is 571-272-1242. The examiner can normally be reached on 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on (571) 272- 7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BH

/Cameron Saadat/
Primary Examiner, Art Unit 3715